

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

**LINDA L. HELTON and
WILLIAM R. HELTON**

Plaintiffs,

v.

CARRABBA’S ITALIAN GRILL,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

**NO. 3:17-CV-116
REEVES/GUYTON**

MEMORANDUM OPINION AND ORDER

On April 18, 2018, Defendant filed a motion for summary judgment on all claims against it [D. 18]. On May 9, Plaintiffs responded with a motion to deny or continue consideration of Defendant’s motion for summary judgment under Fed. R. Civ. P. 56(d) until further discovery could be taken [D. 23]. Defendant did not object and agreed to cooperate in scheduling depositions [D.25]. On June 19, the Court granted Plaintiffs’ motion, ordering the Plaintiffs to file their response *on or before* August 20, and cancelling the planned September 18 trial date [D. 27]. *In light of that order*, the Court rescheduled trial to begin on April 30, 2019, and adjusted the scheduling order accordingly [D. 30].

Plaintiffs did not respond to Defendant’s motion by August 20. In this Court, failure to respond to a motion “may be deemed a waiver to any opposition to the relief sought.” *See* E.D. Tenn. L.R. 7.2. Accordingly, the Court ordered Plaintiffs on August 30 to show cause in writing on or before September 10, 2018, as to why the Defendant’s motion should not be granted and this action dismissed [D. 31]. That same day, Defendant responded to the Court’s show cause order, expressing the parties’ good faith belief that *all deadlines* in relation to the new trial date governed

Plaintiffs' response to Defendant's motion for summary judgment [D. 32]. Defendant further informed the Court that depositions of defense witnesses were scheduled to take place on September 17 and 19 [*Id.*].

The Scheduling Order requires all motions for summary judgment pursuant to Fed. R. Civ. P. 56 to be filed as soon as possible, and no later than 150 days before trial¹ [D. 8]. Because the parties have scheduled depositions for September 17 and 19, the Court finds sufficient cause for Plaintiffs' delay, and will not deem their failure to respond as a waiver of opposition to the relief sought.

Accordingly, the Court will neither grant Defendant's motion for summary judgment nor dismiss this case for failure to prosecute. Plaintiffs shall file their response to Defendant's motion for summary judgment *on or before* **November 5, 2018**. Defendant may file a reply within **seven days** of Plaintiffs' response. Because this deadline approaches December 1—the day when all motions for summary judgment must be filed—the Court asks the parties to promptly inform it if the Plaintiffs cannot file their response by November 5 for any reason.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

¹ Now December 1, 2018, counting backward from April 30, 2019.